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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 01/06/2012

Please find below and/or attached an Office communication concerning this application or proceeding.



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**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/011,434.

PATENT NO. 7,249,372.

ART UNIT 3992.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

<b>Office Action in Ex Parte Reexamination</b>	<b>Control No.</b> 90/011,434	<b>Patent Under Reexamination</b> 7,249,372
	<b>Examiner</b> JOSHUA CAMPBELL	<b>Art Unit</b> 3992

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

- a ☒ Responsive to the communication(s) filed on 17 October 2011.      b ☒ This action is made FINAL.  
c ☐ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).** If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. ☐ Notice of References Cited by Examiner, PTO-892.      3. ☐ Interview Summary, PTO-474.  
2. ☐ Information Disclosure Statement, PTO/SB/08.      4. ☐ \_\_\_\_\_.

**Part II SUMMARY OF ACTION**

- 1a. ☒ Claims 1-68 are subject to reexamination.  
1b. ☐ Claims \_\_\_\_\_ are not subject to reexamination.  
2. ☐ Claims \_\_\_\_\_ have been canceled in the present reexamination proceeding.  
3. ☐ Claims \_\_\_\_\_ are patentable and/or confirmed.  
4. ☒ Claims 1-68 are rejected.  
5. ☐ Claims \_\_\_\_\_ are objected to.  
6. ☐ The drawings, filed on \_\_\_\_\_ are acceptable.  
7. ☐ The proposed drawing correction, filed on \_\_\_\_\_ has been (7a) ☐ approved (7b) ☐ disapproved.  
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of the certified copies have  
1 ☐ been received.  
2 ☐ not been received.  
3 ☐ been filed in Application No. \_\_\_\_\_.  
4 ☐ been filed in reexamination Control No. \_\_\_\_\_.  
5 ☐ been received by the International Bureau in PCT application No. \_\_\_\_\_.  
\* See the attached detailed Office action for a list of the certified copies not received.  
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.  
10. ☐ Other: \_\_\_\_\_

cc: Requester (if third party requester)

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### **DETAILED ACTION**

- 1) This Office action addresses claims 1-68 of United States Patent Number 7,249,372 (Bonnstetter), for which it has been determined in the Order Granting Ex Parte Reexamination (hereafter the "Order") mailed 4/25/2011 that a substantial new question of patentability was raised in the Request for *Ex Parte* reexamination filed on 4/4/2011 (hereafter the "Request").
- 2) Claims 1-68 are subject to reexamination. Claims 12-68 are newly proposed. This is a final rejection in response to the amendment filed 10/17/2011.
- 3) Examiner has reviewed the declarations provided by Bradley Powers, Russell Watson, and Bill Bonnstetter.

#### ***Swearing Back of Reference — Affidavit or Declaration Under 37 CFR 1.131***

- 4) The affidavit or declaration must state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or WTO member country (MPEP §715.07(c)), at least the conception being at a date prior to the effective date of the reference. Where there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR 1.131). In order to antedate the Teknekron reference, the showing of facts must be sufficient to show conception of the invention prior to November 18, 1999 (the effective date of the Teknekron

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reference) coupled with due diligence from prior to November 18, 1999 to January 14, 2000, (the filing date of the application - constructive reduction to practice). In order to antedate the Lacy '109 and Lacy '570 references, the showing of facts must be sufficient to show conception of the invention prior to August 2, 1999 (the effective date of the Lacy '109 and Lacy '570 references) coupled with due diligence from prior to August 2, 1999 to January 14, 2000, (the filing date of the application - constructive reduction to practice).

### **Conception**

Conception is the mental part of the inventive act, but it must be capable of proof, as by drawings, complete disclosure to another person, etc. In *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897), it was established that conception is more than a mere vague idea of how to solve a problem; the means themselves and their interaction must be comprehended also.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice “amounts essentially to mere pleading, unsupported by proof or a showing of facts” and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In *re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). **Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant.** 505 F.2d at 718-19, 184 USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit “asserts that facts exist but does

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not tell what they are or when they occurred.”). The patent owners' declaration appears to assert that certain features of independent claim 1 are shown by the evidence without remotely discussing the features of claims 2-11. The evidence relied upon to show conception of claim 1 appears to be silent to some of the features required by the limitations of claim 1 and the patent owner has provided no explanation where these features may exist. For example, the sections in the evidence provided relied upon to provide proof of conception of limitation (c) of claim 1 make no mention of "... initializing permissions relative to the password based on the level of rights for the entity, said permissions including at least one respondent password having permissions based on the level of rights for a respondent," as required by the claim and the patent owner has not provided any explanation to the contrary. Thus, the evidence and declaration provided are insufficient to show conception of the invention of claims 1-11 at this time.

### **Diligence**

The critical period for diligence for a first conceiver but second reducer begins not at the time of conception of the first conceiver but just prior to the entry in the field (November 18, 1999 in regards to the Teknekron reference, August 2, 1999 in regards to the Lacy '109 and Lacy '570 references) of the party who was first to reduce to practice and continues until the first conceiver reduces to practice (January 14, 2000). *Hull v. Davenport*, 90 F.2d 103, 105, 33 USPQ 506, 508 (CCPA 1937) (“lack of diligence from the time of conception to the time immediately preceding the conception date of the second conceiver is not regarded as of importance except as it may have a bearing upon his subsequent acts”). An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ

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634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); In re Harry, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (**statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading**). A 2-day period lacking activity has been held to be fatal. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) ( 37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period.

The evidence submitted in the declaration is insufficient to establish diligence from a date prior to the date of reduction to practice of the Teknekron reference (filed November 18, 1999) or the date of reduction to practice of the Lacy '109 and Lacy '570 references (filed August 2, 1999) to a constructive reduction to practice (application filing date - January 14, 2000). The declaration and evidence fail to show diligence during both critical periods (just prior to November 18, 1999 through January 4, 2000 and just prior to August 2, 1999 through January 14, 2000). The declaration merely relies on a statement that the inventors worked diligently to reduce the invention to practice, however as shown above this is not a showing but a mere pleading and is clearly not proper.

For the above reasons the Affidavit/Declaration Under 37 CFR 1.131 is not sufficient to prove conception or diligence in order overcome the previous rejections.

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***Rejections***

5) The following ejections are utilized by the examiner below, referencing the proposed prior art listed on page ii of the Request:

*Issue 1:* Claims 6-10 in view of Lacy '109 and Teknekron

*Issue 2:* Claims 1, 11, 12, 13, 23, 50, 55, and 56 in view of Lacy '109, Teknekron, and Lacy '570

*Issue 3:* Claims 1-13, 23, 50, 55, and 56 in view of Sonnenfeld

*Issue 4:* Claims 58-68 in view of 35 U.S.C. 305

*Issue 5:* Claims 14-16, 18-22, 24-49, 52-54, and 57 in view of 35 U.S.C. 112, first paragraph

6) The rejections below are confined to what has been deemed to be the best available art from the Request. However, prior to conclusion of this reexamination proceeding, claims must be patentable over all prior art cited in the order granting reexamination in order to be considered patentable or confirmed on the reexamination certificate. The references cited in the Request and/or Notice of References Cited (PTO-892) but not utilized in the current office action appear to be largely cumulative to the teachings in the references applied below.

***Claim Rejection Paragraphs***

7) ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:



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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

### ***Issue 1***

8) Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable by Lacy '109 in view of Teknekron (See claim mapping in Request pages 26-29, incorporated by reference).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lacy '109 with the teachings of Teknekron. A motivation to combine the two references would be because it would have allowed users to take

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advantage of the Internet or other network enabling them to remotely access the system (page 12, lines 9-12 of Teknekron).

***Issue 2***

9) Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable by Lacy '109 in view of Teknekron, further in view of Lacy '570.

**Regarding independent claim 1**, Lacy '109 discloses a method for managing distribution of assessment documents over a wide area comprising:

(a) providing an assessment instrument for completion by respondents;

*"Storage device 104 stores a set of data signals defining a Comprehensive Skill Set (CSS) shown in Block 108. This CSS defines a comprehensive list of all skills that are to be used for analysis purposes by the users of a system." (Col. 6, lines 47-51 of Lacy '109)*

*"The CSS includes all skills defined for use by all users in performing skill set evaluations. Thus, for a medium or large-size entity such as a large corporation, the CSS includes skills associated with a wide array of activities that cover everything from marketing, business planning initiatives, product development, manufacturing and support, and the like." (Col. 9, lines 37-43 of Lacy '109)*

(b) assigning a password for an entity having a level of rights;

*"FIG. 8 shows a menu provided by Software Means 300 upon invocation of the skill set analysis tool of the current invention. The user may be required to supply a user identifier and a password when invoking the tool." (Col. 11, lines 6-9 of Lacy '109)*

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(c) initializing permissions relative to the password based on the level of rights for the entity, said permissions including at least one respondent password having permissions based on the level of rights for a respondent;

*"The foregoing objects and other objects and advantages are provided in the current invention, which is an improved skill set assessment system and method for allowing a user to complete the skill set assessment process by reviewing only the subset of skills relevant to the user's employment position." (Col. 3, lines 48-52 of Lacy '109)*

*"Access to these reports are controlled using user identifications and associated passwords. Another function provided by the invention of the preferred embodiment is the "Admin" function 824 of FIG. 8. Selection of this function provides the user with access to additional report generation features that are described in detail in the co-pending application entitled "System and Method for Evaluating a Selectable Group of People Against a Selectable Set of Skills" referenced above and incorporated herein by reference in its entirety, (hereinafter, Co-Pending Application). Access to this function is password controlled, and provides the user with access to the management functions that allow for the creation and deletion of the Skill Sets that may be mapped to nodes in a defined EHS as discussed in reference to FIG. 19." (Col. 17, lines 20-35 of Lacy '109)*

(e) providing an assessment instrument to the respondent which gauges an individual potential employee's suitability with regards to a particular job, an individual existing employee's suitability or performance with regards to a particular job, or an individual boss's performance with regards to a particular job;

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*"FIG. 3 is a block diagram of the current invention. Software Means 300 has access to a set of Minimum Skill Set Definitions (MSSDs) shown in Block 302. These MSSDs are selectable for any given user, and may be used as a filter such that during the evaluation process, a user need only review those skills shown as Mandatory Skills in Block 304 that are actually relevant to his employment expectations. That is, the Mandatory Skills are the skills that must be assessed for the analysis of the selected MSSD to be considered complete. All other skills in the CSS are considered Optional Skills, as shown in Block 308. The assessment process may, but need not, be completed for these Optional Skills. The MSSDs are defined using the Minimum Skill Set Definition Means 310 of Software Means 300. According to the current invention, the MSSDs are defined using the hierarchical structure of an entity employing the assessment tool. For example, an MSSD may be defined through a process that takes into account the hierarchical corporate structure of a corporation that is using the assessment tool." (Col. 7, lines 30-49 of Lacy '109, see also Fig. 8)*

(f) receiving responses from the respondent to the assessment instrument;

*"After an employee review has been completed to evaluate the skill assessment data, the data may be uploaded to the Skills Database 114." (Col. 16, lines 42- 44 of Lacy '109)*

(g) processing the responses into an assessment report;

*"FIG. 18 is an illustration of a screen provided after selection of the "Report" function 822. The screen includes a detailed account of assessment data entered for a particular employee..." (Col. 16, line 62 - Col. 17, line 15 of Lacy '109)*

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Lacy '109 does not explicitly disclose (d) allowing the entity access to a web site on a global computer network and enabling the initialized permissions for the entity. However Teknekron discloses allowing the entity access to a web site on a global computer network and enabling the initialized permissions for the entity.

*"Users can take advantage of the Internet or other network to remotely access the performance evaluation system and complete member evaluations. Members can also remotely track their progress." (page 12, lines 9-12 of Teknekron)*

*"In a particular embodiment, the client and server platforms 18 and 20 are each a personal computer connected via the Internet. In this embodiment, the client and server 18 and 20 may each operate using MICROSOFT WINDOWS NT." (page 11, line 31 - page 12, line 5 of Teknekron)*

*"The privilege tables 84 assign each user a view and a class of services. The view specifies the levels and members of an organizational structure to which the user is allowed access. The class of services specifies services of the performance evaluation system 10 that the user is allowed to perform." (page 15, lines 21-25 of Teknekron)*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lacy '109 with the teachings of Teknekron. A motivation to combine the two references would be because it would have allowed users to take

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advantage of the Internet or other network enabling them to remotely access the system (page 12, lines 9-12 of Teknekron).

Neither of Lacy '109 and Teknekron explicitly disclose (h) sending the assessment report to one or more locations authorized by the permissions. However, Lacy '570 discloses sending the assessment report to one or more locations authorized by the permissions.

*"Finally, report control selections are retrieved from the user; including whether summary or detailed data is required, and whether the report results are to be provided to a file or to a display screen. This is displayed in Step 1808." (Col. 13, lines 51-52 of Lacy '570)*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lacy '109 and Teknekron with the teachings of Lacy '570. A motivation to combine the two references would be because it would have allowed users to customize how report results were to be provided (column 13, lines 51-52 of Lacy '570).

**Regarding independent claim 11**, see claim mapping in Request pages 30-33, incorporated by reference. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lacy '109 and Teknekron with the teachings of Lacy '570. A motivation to combine the two references would be because it would have allowed users to customize how report results were to be provided (column 13, lines 51-52 of Lacy '570).

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**Regarding dependent claim 12**, Lacy '109 discloses the method of claim 1 wherein said managing distribution of assessment documents includes employee evaluation for one or more of said entities.

*"After an employee review has been completed to evaluate the skill assessment data, the data may be uploaded to the Skills Database 114." (Col. 16, lines 42- 44 of Lacy '109)*

*"FIG. 3 is a block diagram of the current invention. Software Means 300 has access to a set of Minimum Skill Set Definitions (MSSDs) shown in Block 302. These MSSDs are selectable for any given user, and may be used as a filter such that during the evaluation process, a user need only review those skills shown as Mandatory Skills in Block 304 that are actually relevant to his employment expectations. That is, the Mandatory Skills are the skills that must be assessed for the analysis of the selected MSSD to be considered complete. All other skills in the CSS are considered Optional Skills, as shown in Block 308. The assessment process may, but need not, be completed for these Optional Skills. The MSSDs are defined using the Minimum Skill Set Definition Means 310 of Software Means 300. According to the current invention, the MSSDs are defined using the hierarchical structure of an entity employing the assessment tool. For example, an MSSD may be defined through a process that takes into account the hierarchical corporate structure of a corporation that is using the assessment tool." (Col. 7, lines 30-49 of Lacy '109, see also Fig. 8)*

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**Regarding dependent claim 13,** Lacy '109 discloses the method of claim 12 wherein said employee evaluation is by an employee evaluation services company.

*In today's competitive marketplace, employers are often seeking ways to evaluate and improve the effectiveness of their workforces. One way to accomplish this evaluation process is by assessing the skills possessed by their employees. This knowledge can be used to make informed employment and staffing decisions. This information may also be used to award compensation adjustments, to grant promotions, or to offer incentives that encourage employees to acquire additional skills. Training programs may be developed to compensate for deficiencies uncovered by the skill assessment process.*

*Skill assessment may be performed by an employee's management. More often the skill evaluation process will be completed by employees themselves. Each employee may be required to rate his proficiency at performing a set of skills considered important for adequately performing his job. Sometimes this "skill assessment" process may be performed manually. Alternatively, it may be performed with the aid of an automated skill assessment tool running on a data processing system.*

*Several skill assessment tools are available commercially. These tools allow a set of skills to be entered into a database for use in performing the assessment process. This skills set will generally be defined when the tool is installed for use, and can be modified during the life of the tool. The skill set will usually include all skills related to any employee located anywhere in the entity employing the skills set. For example, an automobile manufacturer employing an automated skill assessment tool may define the skills set to include all skills related to all employees, including those employees in engineering,*



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*manufacturing, marketing, managerial, and accounting positions. As a result, this comprehensive skill set may include thousands of unrelated skills ranging from those skills associated with assembly line techniques to skills relating to knowledge on acceptable accounting methods.*

*By defining a comprehensive skill set such as the one discussed above, any employee anywhere in the company can access the same database to gain a list of skills for which assessment is to be performed. However, the use of this comprehensive skill set may also make using the database cumbersome since only a small number of skills in the database may apply to any given employee. Returning to the previous example, an employee in the engineering development staff has no need to evaluate his proficiency at performing accounting tasks. Likewise, a marketing employee will most likely not be expected to perform skill assessment for skills related to manufacturing jobs.*

*Because most skills included in a comprehensive skill set definition may not be applicable to any given individual, the evaluation process may be time-consuming. This is especially true since prior art skill assessment tools do not provide a way to filter out the irrelevant skills on an employee or group basis. That is, each employee performing the analysis process must access the skills database and decide from the comprehensive skills list which skills will be evaluated and which will be ignored. Some tools provide this comprehensive skills list as an alphabetized menu of skills. This makes the evaluation process particularly difficult since the skills are not arranged in any sort of a logical manner. The user must therefore review the entire list to select applicable skills for assessment. Other tools display the comprehensive skill set using some logical groupings;*

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*for example, all skills associated with an engineering position are presented as a logical skill group. This makes the assessment process easier. However, the employee is still required to view all skill groups in the comprehensive skills set to select the groups thought to be applicable, then select the relevant skills from the selected groups so that assessment may be completed. This selection process makes skiff assessment unnecessarily burdensome and time-consuming.*

(column 1, line 17-column 2, line 21 of Lacy '109)

As described above, employee assessment tools are commercially available (provided by evaluation services companies). As shown below, the employee evaluation assessment tool is provided by a company to be used by corporations, thus the employee evaluation is by definition provided by an employee evaluation services company.

*"FIG. 3 is a block diagram of the current invention. Software Means 300 has access to a set of Minimum Skill Set Definitions (MSSDs) shown in Block 302. These MSSDs are selectable for any given user, and may be used as a filter such that during the evaluation process, a user need only review those skills shown as Mandatory Skills in Block 304 that are actually relevant to his employment expectations. That is, the Mandatory Skills are the skills that must be assessed for the analysis of the selected MSSD to be considered complete. All other skills in the CSS are considered Optional Skills, as shown in Block 308. The assessment process may, but need not, be completed for these Optional Skills. The MSSDs are defined using the Minimum Skill Set Definition Means 310 of Software Means 300. According to the current invention, the MSSDs are defined using the*

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*hierarchical structure of an entity employing the assessment tool. For example, an MSSD may be defined through a process that takes into account the hierarchical corporate structure of a corporation that is using the assessment tool." (Col. 7, lines 30-49 of Lacy '109, see also Fig. 8)*

**Regarding dependent claim 23,** Lacy '109 discloses the method of claim 13 wherein said entities comprise: a. one or more master distributors; b. one or more distributors; or c. one or more clients.

*"FIG. 8 shows a menu provided by Software Means 300 upon invocation of the skill set analysis tool of the current invention. The user may be required to supply a user identifier and a password when invoking the tool." (Col. 11, lines 6-9 of Lacy '109)*

**Regarding dependent claim 50,** Lacy '109 discloses the method of claim 12 wherein the respondent responses are: a. entered via computer by the respondent; or b. manually entered on paper by a respondent and then entered to a computer by another person.

*In the current invention, a user of the skill set analysis tool is allowed to view the hierarchy of skills using a selected MSSD as a filter. The user is only required to perform analysis on those skills included the selected MSSD, and may optionally perform analysis on any other skills not included in the selected MSSD. This greatly reduces the amount of time required to perform analysis. The method for performing skill set analysis using the preferred embodiment of the current invention is described in more detail in reference to FIGS. 8 through 21.*

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*FIG. 8 shows a menu provided by Software Means 300 upon invocation of the skill set analysis tool of the current invention. The user may be required to supply a user identifier and a password when invoking the tool. In response, the MSSD for the user is automatically selected by Software Means 300 from the set of MSSDs shown in Block 302 of FIG. 3. This default MSSD is shown listed as item 800 of FIG. 8. For the current example, it will be assumed that an MSSD called "PDX" is selected, wherein this skill set includes skills associated with a corporate employee of the current example that is employed in a Product Development Group for Product X. The user may select an alternative MSSD to be used in performing skill set analysis. This is accomplished by selecting item 802, "Change Selected Skill Set". In response, the user is provided with a menu listing the names of all defined MSSDs from which the alternative MSSD may be selected.* (column 11, lines 6-22 of Lacy '109)

*FIG. 9 is an illustration of a screen display provided following selection of the "Groups of Categories" function 814 using the MSSD "PDX Minimum Assessment" (hereinafter "PDX"). This function selection, and any of the other selections required for use of the current invention, can occur using a series of keyboard key strokes, using a point-and-click device, using a touch or voice activated selection device, or by using any of the other methods known in the art.* (column 11, line 65-column 12, line 6 of Lacy '109)

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**Regarding dependent claim 55**, Neither of Lacy '109 and Teknekron explicitly disclose the method of claim 12 wherein the one or more locations comprise: a. a single location of an entity; b. multiple locations of an entity; c. a third party; or d. an employee. However, Lacy '570 discloses the method of claim 12 wherein the one or more locations comprise: a. a single location of an entity; b. multiple locations of an entity; c. a third party; or d. an employee.

*"Finally, report control selections are retrieved from the user; including whether summary or detailed data is required, and whether the report results are to be provided to a file or to a display screen. This is displayed in Step 1808." (Col. 13, lines 51-52 of Lacy '570)*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Lacy '109 and Teknekron with the teachings of Lacy '570. A motivation to combine the two references would be because it would have allowed users to customize how report results were to be provided (column 13, lines 51-52 of Lacy '570).

**Regarding dependent claim 56**, Lacy '109 discloses the method of claim 12 wherein the assessment report comprises analysis regarding: a. an individual employee; and b. prediction of: i. an individual potential employee's suitability with regards to said particular job, ii. an individual existing employee's suitability or performance with regards to said particular job, or iii. an individual boss's performance with regards to said particular job.

*"FIG. 3 is a block diagram of the current invention. Software Means 300 has access to a set of Minimum Skill Set Definitions (MSSDs) shown in Block 302. These MSSDs are*

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*selectable for any given user, and may be used as a filter such that during the evaluation process, a user need only review those skills shown as Mandatory Skills in Block 304 that are actually relevant to his employment expectations. That is, the Mandatory Skills are the skills that must be assessed for the analysis of the selected MSSD to be considered complete. All other skills in the CSS are considered Optional Skills, as shown in Block 308. The assessment process may, but need not, be completed for these Optional Skills. The MSSDs are defined using the Minimum Skill Set Definition Means 310 of Software Means 300. According to the current invention, the MSSDs are defined using the hierarchical structure of an entity employing the assessment tool. For example, an MSSD may be defined through a process that takes into account the hierarchical corporate structure of a corporation that is using the assessment tool." (Col. 7, lines 30-49 of Lacy '109, see also Fig. 8)*

*"After an employee review has been completed to evaluate the skill assessment data, the data may be uploaded to the Skills Database 114." (Col. 16, lines 42- 44 of Lacy '109)*

*"FIG. 18 is an illustration of a screen provided after selection of the "Report" function 822. The screen includes a detailed account of assessment data entered for a particular employee..." (Col. 16, line 62 - Col. 17, line 15 of Lacy '109)*

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***Issue 3***

10) Claims 1- 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Sonnenfeld.

**Regarding independent claim 1**, Sonnenfeld discloses a method for managing distribution of assessment documents over a wide area comprising:

*The administration of the test takers and the tests may be performed either locally at the query server device, or remotely through a network system. (column 12, lines 16-18 of Sonnenfeld)*

*In a preferred embodiment, the present system allows for the interactive and secure development and production of tests over the Internet using a standard web browser. (column 4, lines 52-54 of Sonnenfeld)*

*The server is not burdened with continual monitoring of each user, and thus may serve a large number of test takers simultaneously, without overload. (column 2, lines 41-43 of Sonnenfeld)*

(a) providing an assessment instrument for completion by respondents;

*Other uses include giving surveys and any other form of test that is now given on paper. (column 13, lines 11-15 of Sonnenfeld)*

*It is therefore an object of the invention to provide a human response testing system..and a terminal, communication with the host through a communication system, adapted for interaction with the human to acquire responses, wherein the host transmits information*

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*defining at least one of the sections to the terminal, the terminal presents inquiries to the human...* (column 10, lines 28-41 of Sonnenfeld)

*The test part, for example, is transmitted as a single logical unit from a server, which assembles each section, as necessary, based on the parameters, and then groups the sections, based on other parameters, as a part. The server then awaits receipt of responses, which are in a form defined by the section parameters, and interprets the responses in accordance with the section parameters, for output.* (column 2, lines 32-36 of Sonnenfeld)

(b) assigning a password for an entity having a level of rights;

*The test administrator can create test designer accounts and test taker accounts. Each test designer account can create test taker accounts or use those created by the test administrator:*

*Test Administrator → Test Taker(s)*

*Test Designer → Test Taker(s)*

(column 16, lines 8-13 of Sonnenfeld)

*A designer logon identifier and password is required.* (column 17, lines 29-30 of Sonnenfeld)

*Password • Enter the designer account password in the box to the right. Passwords are case sensitive and may not be left blank.* (column 17, lines 34-36 of Sonnenfeld)



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(c) initializing permissions relative to the password based on the level of rights for the entity, said permissions including at least one respondent password having permissions based on the level of rights for a respondent;

*Records test taker information:*

*Name*

*Logon Identifier*

*Password*

(column 7, lines 14-17 of Sonnenfeld)

*Permissions:*

*What test taker is allowed to do when they log on to see test results*

*View fields above*

*Modify fields above*

(column 7, lines 29-32 of Sonnenfeld)

*Limit who can take your test by password protecting your tests by taker. (column 9, lines 17-19 of Sonnenfeld)*

*Password • Enter the current password for security reasons. The password must match that stored in the ITS in order for the test designer to create a new test. This field is case sensitive and required. (column 20, lines 37-40 of Sonnenfeld).*

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*In order for them to be allowed to take the test, the test taker account must be manually assigned to take a particular test. (column 52, lines 54-56 of Sonnenfeld)*

#### *Create A New Test Taker Screen*

*This web page appears after the test designer clicks click the Create New Taker link at the top of the "Your Personal Test Takers" Screen. This page allows the test designer to add a new test taker account and set test taker privileges. Test taker accounts are those accounts in the ITS which allow a person to take a test. (column 50, lines 34-40 of Sonnenfeld)*

*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

*The second column is a set of check boxes. These check boxes determine what fields a test taker sees after logging on to their ITS account. If a check box is checked, the test taker can view the field listed in the first column described above. If the check box is not checked, the test taker will not be able to see their information after logging on to the ITS .... These check boxes determine what fields (if any) a test taker can change after logging onto their ITS account. (column 52, lines 4-22 of Sonnenfeld)*

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(d) allowing the entity access to a web site on a global computer network and enabling the initialized permissions for the entity;

*The system is operable over intranets or the Internet using standard Web browsers.*

(column 2, lines 61-66 of Sonnenfeld)

*The benefits of the present invention are possible using standard server and client systems, with a custom Web server (or other "test" server) to generate test parts and receive responses. (column 3, lines 1-4 of Sonnenfeld)*

*The present invention allows multiple remote users (clients) to interact with a central query server (host). (column 3, lines 38-40 of Sonnenfeld)*

*In a preferred embodiment, the present system allows for the interactive and secure development and production of tests over the Internet using a standard web browser. (column 4, lines 52-54 of Sonnenfeld)*

*Permissions:*

*What test taker is allowed to do when they log on to see test results*

*View fields above*

*Modify fields above*

(column 7, lines 29-32 of Sonnenfeld)

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*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. These fields are required (however, this doesn't mean that the test designer has to check for passwords when giving a test..., refer to "Assign Test Taker(s) To Take Your Test" Screen for more information).*

*Logon ID. Enter the test taker account logon identifier. It must be unique among all of the test taker accounts. This field is used to uniquely identify a test taker account when they log into the ITS system. (column 51, lines 10-23 of Sonnenfeld)*

*The ITS system also provides a number of security features, including:*

*Allowing the test designer to decide who can take your test(s), the number of times they can take them and when they can take them.*

*Password-protection of tests to disallow them from being viewed by others when they are designed.*

*Tampering with tests is not allowed (answers may be checked to ensure that they aren't changed).*

*(column 10, lines 18-27 of Sonnenfeld)*

(e) providing an assessment instrument to the respondent which gauges an individual potential employee's suitability with regards to a particular job, an individual existing employee's suitability or performance with regards to a particular job, or an individual boss's performance with regards to a particular job;

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*...the terminal presents inquiries to the human defined by the section for receipt of responses... (column 10, lines 35-36 of Sonnenfeld)*

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses. (column 1, lines 15-17 of Sonnenfeld).*

*Some systems that can be constructed from these building blocks include educational tests, quizzes, surveys, questionnaires and trivia quizzes. (column 2, lines 9-11 of Sonnenfeld)*

*The query need not be of an academic or demographic nature, and therefore the more general aspect of the system seeks to determine a human response to a stimulus. (column 4, lines 14-16 of Sonnenfeld)*

(f) receiving responses from the respondent to the assessment instrument;

*The server then awaits receipt of responses, which are in form defined by the section parameters, and interprets the responses in accordance with the section parameters, for output. (column 2, lines 35-38 of Sonnenfeld)*

*The logical unit is transmitted to a client for presentation and interaction with the user. The client may include enhanced functionality defined by the logical unit, but outside the scope of the transmission. The client obtains information relating to the sections from the*

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*user or through interaction with the user, and transmits results or responses back to the server, for analysis. (column 3, lines 52-58 of Sonnenfeld)*

(g) processing the responses into an assessment report;

*The output may be subject to further analysis, such as individual and group statistics, feedback to the test taker, or the like. (column 2, lines 38-40 of Sonnenfeld)*

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

*(column 8, lines 46-52 of Sonnenfeld)*

*Know who took your test, when they took it, what they got right (or wrong) and how many times they took it. (column 9, lines 46-47 of Sonnenfeld)*

(h) sending the assessment report to one or more locations authorized by the permissions.

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

*(column 9, lines 58-64 of Sonnenfeld)*

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*View Test Results, Take Tests or Change Your Personal Information • Allows the test designer to view the test results and to take test for which a test taker has been assigned. A series of pages is presented which allow the test designer to review tests taken previously, compute grades and averages based on the tests a test taker has taken, take tests that have been assigned, email the test designer and modify personal account information. (column 17, lines 17-24 of Sonnenfeld)*

**Regarding dependent claim 2**, Sonnenfeld discloses the method of claim 1 wherein the permissions associated with a master distributor level of rights include (a) ability to create response links and passwords,

*Test Administrators → Test Taker(s)*

*Test Designer(s) → Test Taker(s)*

(column 5, lines 11-12 of Sonnenfeld)

*Allows test database administrator to:*

*Become ANY test designer and perform ALL functions associated with that test designer*

(column 8, lines 28-30 of Sonnenfeld)

*When the test designer wants to see what others know about the material or take a poll or survey about the material, they give a test. The individual elements of each section of a test are, for example, coded as follows:*

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*1 • Links*

*Links appear as underlined words on the web page and represent hypertext links which, when clicked upon, take the web browser to another web page.*

(column 13, lines 32-41 of Sonnenfeld)

*According to another object of the present invention, the query server formats a test as an HTML document, which may be, for example, read and responded to through a so-called web browser. (column 11, lines 46-49 of Sonnenfeld)*

*Create • ...After the test designer have entered the required test information, press the Create button to create a test (a valid designer password is required). (column 23, lines 16-19 of Sonnenfeld)*

*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

(b) ability to set up new accounts,

*Test take account screens are web pages that appear when creating accounts for people to take a test. (column 14, lines 31-35 of Sonnenfeld)*



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*The test administrator can create test designer accounts and test taker accounts. Each test designer account can create test taker accounts or use those created by the test administrator: (column 16, lines 8-11 of Sonnenfeld)*

#### *Create A New Test Taker Screen*

*This web page appears after the test designer clicks click the Create New Taker link at the top of the "Your Personal Test Takers" Screen. This page allows the test designer to add a new test taker account and set test taker privileges. Test taker accounts are those accounts in the ITS which allow a person to take a test (column 50, lines 34-44 of Sonnenfeld)*

(c) ability to manage reports,

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

*(column 8, lines 46-52 of Sonnenfeld)*

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

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*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests Or Change Your Personal Information • Allows the test*

*designer to view the test results and to take tests for which a test taker has been assigned.*

(column 17, lines 17-24 of Sonnenfeld)

(d) ability to change its own and others' account options.

*Maintain designer accounts:*

*Create*

*Modify*

*Delete*

*Email designer*

(column 8, lines 32-26 of Sonnenfeld)

*Modify Your Test Designer Information Screen*

*This web page appears after the test designer clicks the Modify link next to the designer*

*information on the "Designer Information and Tests" screen. This page allows the test*

*designer to change the personal test designer information and password. This screen has*

*the following elements: (column 19, lines 14-20 of Sonnenfeld)*

*Modify • This button appears above and below the list (scroll) box. When clicked, it*

*presents the "Test Taker Modify" Screen which allows the test designer to view and*

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*change the information for a particular test taker account. (column 49, lines 62-65 of Sonnenfeld)*

**Regarding dependent claim 3**, Sonnenfeld discloses the method of claim 1 wherein the permissions associated with a distributor level of rights include (a) ability to create response links and passwords,

*Test Administrators → Test Taker(s)*

*Test Designer(s) → Test Taker(s)*

*(column 5, lines 11-12 of Sonnenfeld)*

*Allows test database administrator to:*

*Become ANY test designer and perform ALL functions associated with that test designer*

*(column 8, lines 28-30 of Sonnenfeld)*

*When the test designer wants to see what others know about the material or take a poll or survey about the material, they give a test. The individual elements of each section of a test are, for example, coded as follows:*

*1 • Links*

*Links appear as underlined words on the web page and represent hypertext links which, when clicked upon, take the web browser to another web page.*

*(column 13, lines 32-41 of Sonnenfeld)*

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*According to another object of the present invention, the query server formats a test as an HTML document, which may be, for example, read and responded to through a so-called web browser. (column 11, lines 46-49 of Sonnenfeld)*

*Create • ...After the test designer have entered the required test information, press the Create button to create a test (a valid designer password is required). (column 23, lines 16-19 of Sonnenfeld)*

*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

(b) ability to set up new accounts,

*Test take account screens are web pages that appear when creating accounts for people to take a test. (column 14, lines 31-35 of Sonnenfeld)*

*The test administrator can create test designer accounts and test taker accounts. Each test designer account can create test taker accounts or use those created by the test administrator: (column 16, lines 8-11 of Sonnenfeld)*

*Create A New Test Taker Screen*

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*This web page appears after the test designer clicks click the Create New Taker link at the top of the "Your Personal Test Takers" Screen. This page allows the test designer to add a new test taker account and set test taker privileges. Test taker accounts are those accounts in the ITS which allow a person to take a test (column 50, lines 34-44 of Sonnenfeld)*

(c) ability to manage reports,

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

(column 8, lines 46-52 of Sonnenfeld)

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests Or Change Your Personal Information • Allows the test designer to view the test results and to take tests for which a test taker has been assigned.*

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(column 17, lines 17-24 of Sonnenfeld)

(d) ability to change its own account options.

*Maintain designer accounts:*

*Create*

*Modify*

*Delete*

*Email designer*

(column 8, lines 32-26 of Sonnenfeld)

*Modify Your Test Designer Information Screen*

*This web page appears after the test designer clicks the Modify link next to the designer information on the "Designer Information and Tests" screen. This page allows the test designer to change the personal test designer information and password. This screen has the following elements:* (column 19, lines 14-20 of Sonnenfeld)

**Regarding dependent claim 4**, Sonnenfeld discloses the method of claim 1 wherein the permissions associated with a client level of rights include (a) ability to create response links and passwords,

*Test Administrators → Test Taker(s)*

*Test Designer(s) → Test Taker(s)*

(column 5, lines 11-12 of Sonnenfeld)

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*Allows test database administrator to:*

*Become ANY test designer and perform ALL functions associated with that test designer*

*(column 8, lines 28-30 of Sonnenfeld)*

*When the test designer wants to see what others know about the material or take a poll or survey about the material, they give a test. The individual elements of each section of a test are, for example, coded as follows:*

*1 • Links*

*Links appear as underlined words on the web page and represent hypertext links which, when clicked upon, take the web browser to another web page.*

*(column 13, lines 32-41 of Sonnenfeld)*

*According to another object of the present invention, the query server formats a test as an HTML document, which may be, for example, read and responded to through a so-called web browser. (column 11, lines 46-49 of Sonnenfeld)*

*Create • ...After the test designer have entered the required test information, press the Create button to create a test (a valid designer password is required). (column 23, lines 16-19 of Sonnenfeld)*

*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker*

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*can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

(b) ability to manage reports,

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

(column 8, lines 46-52 of Sonnenfeld)

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests Or Change Your Personal Information • Allows the test designer to view the test results and to take tests for which a test taker has been assigned.*

(column 17, lines 17-24 of Sonnenfeld)

(c) ability to change account options.

*Maintain designer accounts:*



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*Create*

*Modify*

*Delete*

*Email designer*

(column 8, lines 32-26 of Sonnenfeld)

*Modify Your Test Designer Information Screen*

*This web page appears after the test designer clicks the Modify link next to the designer information on the "Designer Information and Tests" screen. This page allows the test designer to change the personal test designer information and password. This screen has the following elements: (column 19, lines 14-20 of Sonnenfeld)*

**Regarding dependent claim 5**, Sonnenfeld discloses the method of claim 1 wherein the permissions associated with a respondent level of rights include (a) respond to an assigned assessment instrument.

*This web page appears after the test designer clicks the view button on the "Your Personal Test Takers" Screen. This page allows the test designer to view a test taker account's current information. Test takers are the people who are eligible to take any of the tests that the test designer creates create. The test designer sets set up accounts for them by using this screen. Once an account has been set up for a test taker, however, doesn't mean that they can automatically take the test. In order for them to be allowed to take the test, the test taker account must be manually assigned to take a particular test.*

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(column 52, lines 46-56 of Sonnenfeld)

*This page allows the test designer to add a new test taker account and set test taker privileges. Test taker accounts are those accounts in the ITS which allow a person to take a test.* (column 50, lines 34-44 of Sonnenfeld)

**Regarding independent claim 6,** Sonnenfeld discloses a system for managing assessments comprising:

(a) a plurality of terminals each adapted to access a wide area network;

*It is therefore an object of the invention to provide a human response testing system, comprising a host...and a terminal communicating with the host through a communication system...* (column 10, lines 28-32 of Sonnenfeld)

*It is noted that, while a preferred embodiment of the present invention allows multiple remote users (clients) to interact with a central query server (host)...* (column 3, lines 38-40 of Sonnenfeld)

*By employing a standard language such as HTML, the system is operable over intranets or the Internet using standard Web browsers such as Microsoft Internet Explorer (MSIE), e.g., MSIE 3.02, Netscape Navigator, e.g. Navigator 4.01, or the like, on standard client computing platforms.* (column 2, lines 61-66 of Sonnenfeld)

(b) a central server;

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*It is noted that, while a preferred embodiment of the present invention allows multiple remote users (clients) to interact with a central query server (host). (column 3, lines 38-40 of Sonnenfeld)*

*The test part, for example, is transmitted as a single logical unit from a server...The server is a transactional based device, servicing each test taker as needed to register, transmit a test part, and receive results. (column 2, lines 32-45 of Sonnenfeld)*

*The ITS server runs with any standard ODBC compliant database and any standard web server that runs on the Windows.TM. Operating System. Once the ITS server is running, however, all that is needed to design and develop tests is any web browser running on any platform. (column 12, lines 60-65 of Sonnenfeld)*

(c) software associated with the central server which administers a web site and which provides permissions;

*A preferred embodiment of the present invention provides a computer software system, called the "Interactive Testing And Questionnaire System" (ITS), which allows for the interactive and secure development and production of tests over the Internet using a standard web browser. The ITS server runs with any standard ODBC compliant database and any standard web server that runs on the Windows.TM. Operating System. Once the ITS server is running, however, all that is needed to design and develop tests is any web browser running on any platform. (column 12, lines 56-65 of Sonnenfeld)*

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*Permissions:*

*What test taker is allowed to do when the log on to see test results*

*View fields above*

*Modify fields above*

(column 7, lines 29-33 of Sonnenfeld)

(d) a password having a set of permissions correlated to a respondent for an assessment survey which gauges an individual potential employee's suitability with regards to a particular job, an individual existing employee's suitability or performance, with regards to a particular job, or an individual boss's performance with regards to a particular job;

*Records test taker information:*

*Name*

*Logon*

*Identifier*

*Password*

(column 7, lines 14-17 of Sonnenfeld)

*Permissions:*

*What test taker is allowed to do when the log on to see test results*

*View fields above*

*Modify fields above*

(column 7, lines 29-33 of Sonnenfeld)

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*Create A New Test Taker Screen*

*This web page appears after the test designer clicks the Create New Taker link at the top of the "Your Personal Test Takers" Screen. This page allows the test designer to add a new test taker account and set test taker privileges. (column 50, lines 34-44 of Sonnenfeld)*

*Password (Enter Twice). Enter the initial test taker account password in both boxes. This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

*The ITS system has various reporting formats, including: Automatically generate notes to test takers (students, job applicants,... ) (column 9, lines 58-60 of Sonnenfeld)*

(e) a password having a set of permissions correlated to an entity interested in the respondent's responses to the assessment survey specifics.

*View Test Results, Take Tests Or Change Your Personal Information • Allows the test designer to view the test results ... (column 17, lines 17-24 of Sonnenfeld)*

*Designer ID • Enter the designer account identifier in the box to the right. Identifiers are not case sensitive. Password • Enter the designer account password in the box to the right. Passwords are case sensitive and may not be left blank. (column 17, lines 32-36 of Sonnenfeld)*

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**Regarding dependent claim 7**, Sonnenfeld discloses the system of claim 6 wherein the assessment relates to job or personal performance of a human.

*Tests of human knowledge, understanding and preferences are well known. In educational environments, they are typically used as indicators for measuring human performance and our knowledge. Test results may be used, for example, to screen job applicants, assign grades to students and to gain insight about human abilities, strengths and weaknesses.* (column 1, lines 12-18 of Sonnenfeld)

*The query need not be of an academic or demographic nature, and therefore the more general aspect of the system seeks to determine a human response to a stimulus.* (column 4, lines 14-36 of Sonnenfeld)

**Regarding dependent claim 8**, Sonnenfeld discloses the system of claim 6 wherein the assessment survey is electronic in nature or is hard copy in nature.

*The present invention relates to the field of electronic testing, and more particularly to a method and system for designing, administering and taking tests through a computer network or other information distribution media.* (column 12, lines 6-9 of Sonnenfeld)

*...the terminal presents inquiries to the human defined by the section for receipt of responses...* (column 10, lines 35-36 of Sonnenfeld)

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*In a preferred embodiment, the present system allows for the interactive and secure development and production of tests over the Internet using a standard web browser.*

(column 4, lines 52-54 of Sonnenfeld)

**Regarding dependent claim 9**, Sonnenfeld discloses the system of claim 6 wherein the report is electronic in nature or is hard copy in nature.

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

(column 8, lines 46-52 of Sonnenfeld)

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

**Regarding dependent claim 10**, Sonnenfeld discloses the system of claim 6 wherein the set of permissions can vary from password to password.

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*The operation of the system is defined herein functionally by way of its inputs and outputs. These inputs are presented as "screens", which are, in the preferred embodiment, HTML 3.0 coded web pages. The system presents a number of different types of pages or screens to users, depending on their privilege level within the system and the task being performed. (column 12, lines 48-55 of Sonnenfeld)*

**Regarding independent claim 11**, Sonnenfeld discloses a method of evaluation or assessment of persons, jobs, or employees comprising:

(a) assigning a password for a respondent;

*Records test taker information:*

*Name*

*Logon*

*Identifier*

*Password*

(column 7, lines 14-17 of Sonnenfeld)

(b) initializing a set of permissions relative to the password;

*Permissions:*

*What test taker is allowed to do when they log on to see test results*

*View fields above*

*Modify fields above*

(column 7, lines 29-33 of Sonnenfeld)



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*This web page appears after the test designer clicks the view button on the "Your Personal Test Takers" Screen. This page allows the test designer to view a test taker account's current information. Test takers are the people who are eligible to take any of the tests that the test designer creates create. The test designer sets set up accounts for them by using this screen. Once an account has been set up for a test taker, however, doesn't mean that they can automatically take the test. In order for them to be allowed to take the test, the test taker account must be manually assigned to take a particular test.*

*(column 52, lines 46-56 of Sonnenfeld)*

*Password (Enter Twice) . Enter the initial test taker account password in both boxes.*

*This is necessary to verify that the test designer typed in the password correctly. The test taker can later change their own password if their account has permission to do so. The information entered is case-sensitive. (column 51, lines 10-14 of Sonnenfeld)*

*The second column is a set of check boxes. These check boxes determine what fields a test taker sees after logging on to their ITS account. If a check box is checked, the test taker can view the field listed in the first column described above. If the check box is not checked, the test taker will not be able to see their information after logging on to the ITS .... These check boxes determine what fields (if any) a test taker can change after logging onto their ITS account. (column 52, lines 4-22 of Sonnenfeld)*

(c) providing an assessment instrument which gauges an individual potential employee's suitability with regards to a particular job, an individual existing employee's suitability or

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performance with regards to a particular job, or an individual boss's performance with regards to a particular job to a respondent after verification of password;

*...the terminal presents inquiries to the human defined by the section for receipt of responses... (column 10, lines 35-36 of Sonnenfeld)*

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses. (column 1, lines 15-17 of Sonnenfeld).*

*Some systems that can be constructed from these building blocks include educational tests, quizzes, surveys, questionnaires and trivia quizzes. (column 2, lines 9-11 of Sonnenfeld)*

*The query need not be of an academic or demographic nature, and therefore the more general aspect of the system seeks to determine a human response to a stimulus. (column 4, lines 14-16 of Sonnenfeld)*

(d) receiving responses from the respondent to the assessment instrument;

*The server then awaits receipt of responses, which are in form defined by the section parameters, and interprets the responses in accordance with the section parameters, for output. (column 2, lines 35-38 of Sonnenfeld)*

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*The logical unit is transmitted to a client for presentation and interaction with the user.*

*The client may include enhanced functionality defined by the logical unit, but outside the scope of the transmission. The client obtains information relating to the sections from the user or through interaction with the user, and transmits results or responses back to the server, for analysis. (column 3, lines 52-58 of Sonnenfeld)*

(e) processing the responses into an assessment report;

*The output may be subject to further analysis, such as individual and group statistics, feedback to the test taker, or the like. (column 2, lines 38-40 of Sonnenfeld)*

*The ITS allows a person to interactively create and give out tests securely on the Internet using a standard web browser interface. The use of the ITS can be broken into the following areas of functionality:*

- 1. Test Design and Development*
- 2. Test Taking ("Using The Test")*
- 3. Statistics, Reports and Analysis of Test Results*

*(column 8, lines 46-52 of Sonnenfeld)*

*Know who took your test, when they took it, what they got right (or wrong) and how many times they took it. (column 9, lines 46-47 of Sonnenfeld)*

(f) sending the assessment report to one or more locations authorized by the set of permissions associated with the password.

*The ITS system has various reporting formats, including:*

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*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests or Change Your Personal Information • Allows the test designer to view the test results and to take test for which a test taker has been assigned.*

*A series of pages is presented which allow the test designer to review tests taken previously, compute grades and averages based on the tests a test taker has taken, take tests that have been assigned, email the test designer and modify personal account information. (column 17, lines 17-24 of Sonnenfeld)*

**Regarding dependent claim 12**, Sonnenfeld discloses the method of claim 1 wherein said managing distribution of assessment documents includes employee evaluation for one or more of said entities.

*...the terminal presents inquiries to the human defined by the section for receipt of responses... (column 10, lines 35-36 of Sonnenfeld)*

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses. (column 1, lines 15-17 of Sonnenfeld).*

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*Some systems that can be constructed from these building blocks include educational tests, quizzes, surveys, questionnaires and trivia quizzes. (column 2, lines 9-11 of Sonnenfeld)*

*The query need not be of an academic or demographic nature, and therefore the more general aspect of the system seeks to determine a human response to a stimulus. (column 4, lines 14-16 of Sonnenfeld)*

**Regarding dependent claim 13**, Sonnenfeld discloses the method of claim 12 wherein said employee evaluation is by an employee evaluation services company.

*The administration of the test takers and the tests may be performed either locally at the query server device, or remotely through a network system. (column 12, lines 16-18 of Sonnenfeld)*

*In a preferred embodiment, the present system allows for the interactive and secure development and production of tests over the Internet using a standard web browser. (column 4, lines 52-54 of Sonnenfeld)*

*The server is not burdened with continual monitoring of each user, and thus may serve a large number of test takers simultaneously, without overload. (column 2, lines 41-43 of Sonnenfeld)*

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*It is therefore an object of the invention to provide a human response testing system..and a terminal, communication with the host through a communication system, adapted for interaction with the human to acquire responses, wherein the host transmits information defining at least one of the sections to the terminal, the terminal presents inquiries to the human...* (column 10, lines 28-41 of Sonnenfeld)

The testing company of Sonnenfeld which provides the assessment tools would be considered an employee evaluation services company when assessment tools are provided for job screening, as shown below.

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses.* (column 1, lines 15-17 of Sonnenfeld).

**Regarding dependent claim 23**, Sonnenfeld discloses the method of claim 13 wherein said entities comprise: a. one or more master distributors; b. one or more distributors; or c. one or more clients.

*The test administrator can create test designer accounts and test taker accounts. Each test designer account can create test taker accounts or use those created by the test administrator:*

*Test Administrator → Test Taker(s)*

*Test Designer → Test Taker(s)*

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(column 16, lines 8-13 of Sonnenfeld)

*A designer logon identifier and password is required. (column 17, lines 29-30 of Sonnenfeld)*

*Password • Enter the designer account password in the box to the right. Passwords are case sensitive and may not be left blank. (column 17, lines 34-36 of Sonnenfeld)*

**Regarding dependent claim 50**, Sonnenfeld discloses the method of claim 12 wherein the respondent responses are: a. entered via computer by the respondent; or b. manually entered on paper by a respondent and then entered to a computer by another person.

*The server then awaits receipt of responses, which are in form defined by the section parameters, and interprets the responses in accordance with the section parameters, for output. (column 2, lines 35-38 of Sonnenfeld)*

*The logical unit is transmitted to a client for presentation and interaction with the user.*

*The client may include enhanced functionality defined by the logical unit, but outside the scope of the transmission. The client obtains information relating to the sections from the user or through interaction with the user, and transmits results or responses back to the server, for analysis. (column 3, lines 52-58 of Sonnenfeld)*

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**Regarding dependent claim 55**, Sonnenfeld discloses the method of claim 12 wherein the one or more locations comprise: a. a single location of an entity; b. multiple locations of an entity; c. a third party; or d. an employee.

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests or Change Your Personal Information • Allows the test designer to view the test results and to take test for which a test taker has been assigned. A series of pages is presented which allow the test designer to review tests taken previously, compute grades and averages based on the tests a test taker has taken, take tests that have been assigned, email the test designer and modify personal account information. (column 17, lines 17-24 of Sonnenfeld)*

**Regarding dependent claim 56**, Sonnenfeld discloses the method of claim 12 wherein the assessment report comprises analysis regarding: a. an individual employee; and b. prediction of: i. an individual potential employee's suitability with regards to said particular job, ii. an individual existing employee's suitability or performance with regards to said particular job, or iii. an individual boss's performance with regards to said particular job.



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*...the terminal presents inquiries to the human defined by the section for receipt of responses... (column 10, lines 35-36 of Sonnenfeld)*

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses. (column 1, lines 15-17 of Sonnenfeld).*

*Some systems that can be constructed from these building blocks include educational tests, quizzes, surveys, questionnaires and trivia quizzes. (column 2, lines 9-11 of Sonnenfeld)*

*The query need not be of an academic or demographic nature, and therefore the more general aspect of the system seeks to determine a human response to a stimulus. (column 4, lines 14-16 of Sonnenfeld)*

*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

*(column 9, lines 58-64 of Sonnenfeld)*

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*Issue 4*

11) New claims 58-68 fail to meet the requirements of 35 U.S.C. 305, thus claims 58-68 have been rejected under 35 U.S.C. 305.

35 U.S.C. 305 recites the following:

“After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as claimed from the prior art cited under the provisions of section 301 of this title, or in response to a decision adverse to the patentability of a claim of a patent. **No proposed amended or new claim enlarging the scope of a claim of the patent will be permitted in a reexamination proceeding under this chapter.** All reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office.”  
(emphasis added)

Claims 58-68 not only attempt to enlarge the scope of the claimed invention in the Bonnstetter patent by adding what could be considered a newly claimed invention, but they also are more broad than the previously patented claims omitting vital limitations which were paramount to the initial determinations of patentability of the Bonnstetter patent. Examples of the omitted vital limitations are provided below.

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Claims 58-66 provide no discussions of permissions relative to the passwords that were assigned to an entity and authorizing reports based on those permissions (see claims 1, 6, and 11).

Claim 67 provides no discussions of providing an assessment survey/instrument to the respondent which gauges an individual potential employee's suitability or performance with regards to a particular job or an individual boss's performance with regards to a particular job (see claims 1 and 11) or providing a password having a set of permissions correlated to a respondent for an assessment survey/instrument to the respondent which gauges an individual potential employee's suitability or performance with regards to a particular job or an individual boss's performance with regards to a particular job (see claim 6).

Claim 68 provides no discussions of sending the assessment report to one or more locations authorized by the set of permissions associated with the password (see claims 1 and 11) or a password having a set of permissions correlated to an entity interested in the respondent's responses to the assessment survey specifics (see claim 6).

Thus, new claims 58-68 attempt to enlarge the scope of the claims of the Bonnstetter patent and therefore will not be permitted in the reexamination proceeding.

#### *Issue 5*

12) New claims 14-16, 18-22, 24-49, 52-54, and 57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably

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convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The citations provided on pages 14-16 of Patent Owner's Response filed 10/17/2011 regarding the support for the new claims do not convey all of the subject matter contained within new claims 14-16, 18-22, 24-49, 52-54, and 57. Thus, Patent Owner has failed to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

### ***Response to Arguments***

- 13) With regards to the rejections in view of Lacy '109, Teknekron, and Lacy '570:
  - a. Patent Owner (PO) argues that the references do not qualify as prior art in view of the declaration filed under 37 C.F.R. 1.131. As discussed above the declaration under 37 C.F.R. 1.131 filed in this proceeding is not sufficient to antedate the references in question. The examiner acknowledges that in the original prosecution declarations were found sufficient to antedate different references, however it is important to note those declarations were not filed in this proceeding and examiner is not bound by the decision made regarding the declarations filed during original prosecution. However, as a courtesy the examiner has performed a cursory review of the previously filed declarations and the examiner believes that they suffer the same deficiencies as the declaration filed in this reexamination proceeding. PO has provided no other arguments regarding the rejections provided in view of the Lacy '109, Teknekron, and Lacy '570 references.
- 14) With regards to the rejections in view of Sonnenfeld:

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a. PO argues that the term “assessment instrument” is not taught by the Sonnenfeld reference, because unlike testing the assessment instrument as claims relates to attributes and values. PO points to the Watson declaration specifically for this argument. PO specifically argues that Sonnenfeld relates to testing like the ACT and LSAT which are not “assessment instruments”. The examiner respectfully disagrees. Both the ACT and LSAT are in fact assessment instruments to those of ordinary skill in the art. In fact much simpler tests can be classified as assessment instruments as long as they provide an assessment of something, which includes assessing the knowledge of subject matter. This argument is nothing more than an attempt to assert meaning to the term “assessment instrument” that is not found in the claim nor anywhere the specification. The testing disclosed by Sonnenfeld are assessment instruments capable of assessing a variety of items from student grades, to job screening, or to determine human strengths and weaknesses.

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses.*

(column 1, lines 15-17 of Sonnenfeld)

b. PO argues that the Sonnenfeld reference does not teach, “... an assessment instrument to the respondent which gauges an individual potential employee's suitability with regards to a particular job, an individual existing employee's suitability or performance with regards to a particular job, or an individual boss's performance with regards to a particular job.” More specifically, PO argues that the statement that Sonnenfeld's testing system could be used for job screening does not properly anticipate

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the limitation in question. The examiner disagrees with this statement. The teachings of Sonnenfeld disclose an assessment instrument (testing system) that can be used to determine a potential employee's suitability with regards to a particular job (also known as job screening), which is all that is required of limitation as presented in the independent claims.

*Test results may be used, for example, to screen job applicants, assign grades to students, and to gain insight about human abilities, strengths and weaknesses.*

(column 1, lines 15-17 of Sonnenfeld)

c. PO argues that the Sonnenfeld reference does not teach, "...sending the assessment report to one or more locations authorized by the permissions" of claims 1 and 11. More specifically, PO argues that the permissions associated with the passwords in Sonnenfeld have no bearing on what locations the report is sent. Examiner disagrees. In the system Sonnenfeld a user is created with a logon and password and a set of permissions is set for created users.

*Records test taker information:*

*Name*

*Logon Identifier*

*Password*

(column 7, lines 14-17 of Sonnenfeld)

*Permissions:*

*What test taker is allowed to do when they log on to see test results*

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*View fields above*

*Modify fields above*

(column 7, lines 29-32 of Sonnenfeld)

In order to take any test (which in turn allows a test taker to view the results) the test must be assigned to that user which is by definition relative to the password. The user logs on to the system and takes a specific test and the results of that test are available to that specific user and the test designer (who both log in with their passwords which define their permissions such as see the results of that specific test) once the test is completed. No other test taker who has a different logon ID and password can see the results of the person who took the test. Thus, the permissions relative to the password dictate where the results (report) of the test are sent. In this case it is the display screen of the user or the database file which the test designer has access.

*Limit who can take your test by password protecting your tests by taker. (column 9, lines 17-19 of Sonnenfeld)*

*Password • Enter the current password for security reasons. The password must match that stored in the ITS in order for the test designer to create a new test.*

*This field is case sensitive and required. (column 20, lines 37-40 of Sonnenfeld).*

*In order for them to be allowed to take the test, the test taker account must be manually assigned to take a particular test. (column 52, lines 54-56 of Sonnenfeld)*

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*The ITS system has various reporting formats, including:*

*Automatically generate notes to test takers (students, job applicants,... )*

*Generate notes and periodical report cards home to parents*

*Give feedback to upper management about how people have done in the past*

(column 9, lines 58-64 of Sonnenfeld)

*View Test Results, Take Tests or Change Your Personal Information • Allows the test designer to view the test results and to take test for which a test taker has been assigned. A series of pages is presented which allow the test designer to review tests taken previously, compute grades and averages based on the tests a test taker has taken, take tests that have been assigned, email the test designer and modify personal account information. (column 17, lines 17-24 of Sonnenfeld)*

PO also appears to argue that this feature is evident in claim 6, however it is extremely important to note that there is nothing in claim 6 that reads on the feature "...sending the assessment report to one or more locations authorized by the permissions" in any way, implicit or explicit.

d. PO argues that the different entities/relationships of claims 2-5 are not taught by the Sonnenfeld reference, as shown by Figure 1 which identifies the multiple parties and how they interact in specific business relationships. However, examiner disagrees with



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the PO's interpretations of the claims. Claims 2-5 all depend from claim 1, thus the master distributor of claim 2 never coexists in the claimed invention with any of the other entities of claims 3-5. The same is true of each entity found in each of claims 2-5. Thus, the business relationships of these entities are clearly non-existent in the claims and the argument regarding those relationships is clearly moot.

e. PO argues for claims 7-10 that Sonnenfeld does not disclose certain features of the claims. However, PO has not really provided any evidence of this, rather merely alleging a difference. Regarding claim 7, the discussion found above regarding job screening provides a basis for the examiner's position. Regarding claims 8 and 9, the claims merely require that the surveys and reports be electronic or hard-copy, not both so the PO's agreement that Sonnenfeld is totally electronic is more than sufficient to maintain the rejection of those claims. Regarding claim 10, the discussion found above regarding passwords and permissions provides a basis for the examiner's position with regards to this issue.

f. Regarding the Bonnstetter declaration and its relevance to the Sonnenfeld declaration. It appears PO is attempting to assert secondary considerations of non-obviousness in regards to the Sonnenfeld rejection on page 23 of the response filed 10/17/2011, however it is extremely important to note that secondary considerations of non-obviousness have no implication on the analysis of an anticipation rejection. Thus, the discussion regarding these secondary considerations is moot.

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*Conclusion*

**THIS ACTION IS MADE FINAL.**

**Extensions of time under 37 CFR 1.136(a) do not apply in reexamination proceedings.** The provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Further, in 35 U.S.C. 305 and in 37 CFR 1.550(a), it is required that reexamination proceedings "will be conducted with special dispatch within the Office."

**Extensions of time in reexamination proceedings are provided for in 37 CFR 1.550(c).** A request for extension of time must be filed on or before the day on which a response to this action is due, and it must be accompanied by the petition fee set forth in 37 CFR 1.17(g). The mere filing of a request will not effect any extension of time. An extension of time will be granted only for sufficient cause, and for a reasonable time specified.

The filing of a timely first response to this final rejection will be construed as including a request to extend the shortened statutory period for an additional month, which will be granted even if previous extensions have been granted. In no event however, will the statutory period for response expire later than SIX MONTHS from the mailing date of the final action. See MPEP § 2265.

All correspondence relating to this ex parte reexamination proceeding should be directed as follows:

By U.S. Postal Service Mail to:

Mail Stop Ex Parte Reexam  
ATTN: Central Reexamination Unit  
Commissioner for Patents

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P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX to:

(571) 273-9900  
Central Reexamination Unit

By hand to:

Customer Service Window  
Randolph Building  
401 Dulany St.  
Alexandria, VA 22314

By EFS-Web:

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Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Joshua D Campbell/  
Primary Examiner, Art Unit 3992

ALB  
ARL